

# SUPREME COURT OF INDIA

C.Chandrasekaraiah

Vs.

State of Karnataka

Crl.A.No.621 of 2013

(Madan B. Lokur and Uday Umesh Lalit JJ.)

13.04.2015

## JUDGMENT

### UDAY UMESH LALIT, J.

1. This appeal by special leave challenges the judgment and order dated 13.05.2012 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 1501 of 2007 setting aside the judgment of acquittal rendered by the trial court and convicting the appellant under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (the Act, for short) and sentencing him to undergo rigorous imprisonment for a period of 1 year on each of the aforesaid two counts and also to pay fine of Rs.5,000/- and Rs.10,000/- on the aforesaid two counts respectively, in default whereof to undergo further simple imprisonment for periods of 2 months and 3 months respectively. The sentences were ordered to run concurrently.

2. This matter arises out of complaint Ext. P -8 lodged by PW-3 Basavraju at 3:00 p.m. on 3.12.2005 with Lokayukta Police Station. It is the case of the prosecution that the Complainant and three others were granted anticipatory bail by the Additional Sessions Judge, Mandya and in connection therewith he had gone to Malavalli Rural Police Station for executing the bail bond. The appellant who was then working as Sub Inspector of Police allegedly demanded Rs.1,000/- from each of those persons in order to permit them to sign the bail bonds and avail the facility. It was alleged that said Complainant had gone to the Police Station along with surety Siddaraju and met the appellant but the appellant refused to permit him to execute the bail bond. On 1.12.2005, at the insistence of the Complainant bail bond was prepared by writer Rajendra but the appellant shouted at him why it was

prepared without asking him. The Complainant thereafter approached Circle Police Inspector Ganagadhar Swami and sought his assistance but was told to take necessary steps open to him, whereafter the complainant lodged complaint Ext. P-8.

3. After recording the complaint, PW-6 D. Jairamu, Police Inspector working in Mysore Lokayukta Police Station took necessary steps to lay the trap. Two independent witnesses namely PW-1 K.L. Umashankar and PW-2 B.K. Nagaraju both working in the office of the Joint Director of Horticulture, Mandya, were associated with the trap proceedings as Panchas. After giving necessary instructions, two currency notes of Rs.500/- each given by the complainant were applied Phenolphthalein powder and their numbers were also noted. The party then proceeded to Malavalli Rural Police Station. However, since the appellant was not in the Police Station, the proceedings were deferred. The next day being a holiday, the concerned persons assembled in Lokayukta office on 5.12.2005 at 8:00 a.m. The Currency Notes were again checked and powder was applied. PW-3 Complainant was given a Micro Phone Recorder and was instructed to switch it on as he would enter the Police Station. PW-3 Complainant was to be accompanied by PW-1 Umashankar while the other Panch PW-2 Nagaraju was to be with the raiding party.

4. PW-3 Complainant and PW-1 Umashankar entered the Police Station and found the appellant sitting there. It is the case of the prosecution that pursuant to the demand made by the appellant, PW-3 complainant made over those two currency notes of Rs.500- each. The appellant received the Currency Notes in his right hand and kept the same in the hip pocket of his trouser. PW 3 Complainant and PW-1 Umashankar came out of the Police Station and gave requisite signal whereafter the raiding party came inside and apprehended the appellant. Upon chemical examination, his right hand turned pink. The money was recovered from the possession of the appellant under a panchnama. The appellant on being asked, gave his explanation in writing Ext. P-3 to the effect that the money was thrust into his pocket forcibly. After due investigation, the appellant was tried for the offences punishable under Section 7 and 13(1)d read with 13(2) of the Act.

5. The prosecution examined seven witnesses including two Panchas as PW- 1 and PW-2, the complainant as PW-3 and the investigating officer as PW-6. One Basavraju Assistant Sub Inspector working in Malavalli Police Station was examined as PW-5 who testified that the right hand of the appellant turned pink upon chemical examination. During the trial the appellant did not stand by the statement given in his explanation Ext. P-3 and chose to remain silent and pleaded

false implication. No evidence was led by him by way of examining any defence witnesses.

6. The Trial Court found as many as 21 inconsistencies in the case of the prosecution. It was observed that the signatures of the complainant as well as his surety Sidharajau were obtained in the Bail Bond Register on 1.12.2005 itself and therefore no work pertaining to PW-3 Complainant was pending with the appellant and as such there was no scope or occasion for the appellant to demand or to accept illegal gratification. It further held that there was no corroboration on material particulars and therefore it would not be proper to proceed with the presumption under Section 20 of the Act. Finding the alleged demand on 3.12.2005 or at any time after 1.12.2005 being doubtful, it extended the benefit of doubt and acquitted the appellant of the charges leveled against him.

7. The State being aggrieved preferred Crl. Appeal No. 1501 of 2007 before the High Court. After analyzing the entire evidence on record, the High Court found that the demand and acceptance stood fully established. It also noted that the initial theory as set out in explanation Ext. P-3 was not established at all. The High Court further found that the prosecution had established the case beyond any doubt and that the trial court had not considered the evidence of material witness in proper perspective. The High Court therefore allowed the appeal and convicted the appellant as stated above. The appellant being aggrieved has preferred the instant appeal by Special Leave. It may be noted that because of medical condition the appellant was granted exemption from surrender by this court which order has continued during the pendency of the appeal.

8. Mr. P. Vishwanath Shetty, learned Senior Advocate appearing for the appellant submitted that the Trial Court had detailed out 21 reasons pointing out inconsistencies and contradictions in the case of the prosecution, that pre trap proceedings were vitiated, that the tape recorder which was with PW-3 complainant was not produced on record, that there were inconsistencies between the versions of PW-3 complainant and PW- 1 Umashankar as regards the alleged demand made by the appellant, that both the Panchas were from Govt. office and thus amenable to pressure from Lokayukta police. It was further submitted that the view taken by the Trial Court was a plausible view and as such the High Court in an appeal against acquittal ought not to have interfered in the matter. Appearing for the State Ms. Anitha Shenoy, learned advocate submitted that the alleged inconsistencies between the versions of PW-1 and PW-3 were not on material aspects, that the demand and acceptance were completely established in the matter, that the theory of thrusting of currency notes into the hip pocket of the complainant

as stated in Ext.P-3 was given a complete go by and there was no evidence which could point against invocation of presumption under Section 20 of the Act.

9. We have considered the rival submissions and have gone through the record. The signature of surety Sidharaju was obtained in the Bail Bond Register on 1.12.2005 but that of PW-3 complainant was not allowed to be taken. Such signature was taken only after the exchange of money as stated by PW-3 and PW-1. Moreover, no entry was made in the Station Diary Ext. P- 5 as stated by PW-6 Investigating Officer as well as PW-5 Basavraju. The Trial Court was therefore not justified in concluding that everything stood completed on 1.12.2005 itself. We have also scanned the evidence of the relevant witnesses and found the following:-

Though there is variation in their version as regards the actual words uttered by the appellant, both PWs 1 and 3 are consistent that such demand was made , Both are again consistent that money was made over by PW-3 complainant which was received in right hand by the appellant, that the money was kept by the appellant in the hip pocket of the trouser, that thereafter the Bail Bond Register was placed by the appellant in front of PW-3 complainant, that thereafter the complainant signed in the Bail Bond Register, that thereafter they came out of the Police Station and the requisite signal was given by them, that they again entered the Police Station along with raiding party.

and that the right hand of the appellant upon being dipped in the solution turned pink, whereas his left hand did not.

As regards these facets of the matter, there is complete consistency between PW-1 Umashankar and PW-3 complainant and as regards other features of the matter i.e. after the raiding party had entered the Police Station, they also stand corroborated by the other witnesses.

10. The immediate explanation offered by the appellant was that the money was thrust into his pocket but this was given up and the appellant remained silent. In the absence of any evidence offered by the appellant to explain the circumstances, the presumption under Section 20 of the Act was not in any way rebutted and the prosecution case stood completely established.

11. The High Court was conscious that it was considering the appeal against acquittal but it was justified in interfering in the matter and reversing the acquittal. We find no infirmity in the view taken by the High Court. The appeal thus being

devoid of merit is dismissed. We are alive to the fact that the appellant has medical condition, but since he has been given the minimum sentence, no variation is permissible. We, therefore, dismiss the appeal and direct the appellant to surrender immediately to undergo the sentence awarded to him.